

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:      Gerald Waggoner and Keenan Clyde    )  
              Ward 017, Block 019, Parcel 00004    ) Shelby County  
              Commercial Property                    )  
              Tax Years 2004 & 2005                )

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued as follows:

**Tax Year 2004**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$45,000	\$174,800	\$219,800	\$87,920

**Tax Year 2005**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$92,700	\$127,100	\$219,800	\$87,920

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 21, 2007 in Memphis, Tennessee. In attendance at the hearing were Gerald Waggoner, Esq., H. Andrew Crisler III, Esq., and Shelby County Property Assessor's representatives Mark Richardson and Corey Ware.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property consists of a residential structure converted to a law office located at 1433 Poplar Avenue in Memphis. The building was originally constructed in 1917.

The assessor of property has historically appraised subject building as she would any other improvement. For tax year 2003 subject property was appraised as follows:

Land Value	\$ 45,000
Improvement Value	\$109,000
Total Value	\$154,000
Assessment	\$ 61,600

As will be discussed below, subject building was deleted from the tax rolls beginning with tax year 2004. Consequently, subject property was initially appraised as follows for tax years 2004 and 2005:

	<u>Tax Year 2004</u>	<u>Tax Year 2005</u>
Land Value (\$)	45,000	92,700
Improvement Value (\$)	0	0
Total Value (\$)	45,000	92,700
Assessment (\$)	18,000	37,080



On February 20, 2006, the assessor issued a "Notice of Assessment Change" for each parcel. The notices were introduced into evidence as Exhibit #1. For ease of reference both notices are appended to this order.

The assessor's representative, Mark Richardson, testified that subject building was inadvertently deleted from the tax rolls following the issuance of a demolition permit on May 22, 2003 for a building on another parcel. According to Mr. Richardson, the assessor's office erroneously processed the permit as if it pertained to subject building. The assessor's office discovered its mistake following a field review on December 6, 2005.

Although a number of issues were raised at the hearing, the administrative judge finds that the threshold issue concerns whether the corrections were procedurally defective and must be set aside. For purposes of deciding that issue, the administrative judge will assume *arguendo* that a correctable error occurred as that term is defined in Tenn.

Code Ann. § 67-5-509(f) which provides as follows:

(f) Errors or omissions correctable under this section include only obvious clerical mistakes, involving no judgment of or discretion by the assessor, apparent from the face of the official tax and assessment records, such as the name or address of an owner, the location or physical description of property, misplacement of a decimal point or mathematical miscalculation, errors of classification, and duplicate assessment. Errors or omissions correctable under this section do not include clerical mistakes in tax reports or schedules filed by a taxpayer with the assessor.

The administrative judge finds that the procedure for making a correction of error is set forth in Tenn. Code Ann. § 67-5-509(c) which provides in relevant part as follows:

(1) Whenever the assessor shall discover, or it has been called to such assessor's attention, that there has been an error or omission in the listing, description, classification or assessed value of property or any other error or omission in the tax rolls held by the trustee or municipal collector, *the assessor shall certify in writing the facts to the trustee or municipal collector*, who shall receive the tax on the corrected assessment and report the difference in the trustee's or municipal collector's errors and releasement list, and shall make such other corrections as such certificate may show right and proper.

(2) *The assessor shall certify to the trustee or municipal collector the facts and the reasons for such a change in such assessment*, and the tax shall be collected upon the revised assessment.

[Emphasis supplied]

\* \* \*



As can be seen from the appended notices, the facts and reasons for the assessment changes are nowhere to be found. Instead, the assessor issued notices with generic “boilerplate” which provided as follows:<sup>1</sup>

\* \* \*

In reviewing our records on the above described property, we found an error which existed for the assessment year 2004. Per TCA 67-5-509(c) (1), the assessor is required to correct the assessed value and report this change to the County Trustee and any municipal collector.

\* \* \*

This appraisal/assessment information is being provided to the City of Memphis Treasurer & County Trustee.

\* \* \*

The administrative judge finds that there is nothing in the record to indicate that the trustee or municipal collector were provided with a separate document specifying the facts and reasons for the assessment change. Accordingly, the administrative judge must presume that the trustee and municipal collector received the same notice as the taxpayer.

The administrative judge finds that neither notice complies with Tenn. Code Ann. § 67-5-509(c) because the facts and reasons for the changes are not stated. The administrative judge finds that in *Lemm Services, Inc.* (Shelby Co., Tax Year 1996) the Assessment Appeals Commission ruled that “the complaint procedure must be strictly followed to assure the validity of the back assessment.” Final Decision and Order at 2. The Commission concluded that because the citation was not sworn and did not state a basis for the back assessment or reassessment the document was defective and the back assessment or reassessment was therefore void. The administrative judge finds the Commission’s ruling in that case equally applicable to a correction of error proceeding.

The administrative judge finds that the need to state the facts and reasons for a correction was made painfully clear in *Dudley W. & Louise S. Lee* (Shelby Co., Tax Years 2005 and 2006). For ease of reference, the administrative judge’s initial decision and order in that appeal is also appended to this order. Suffice it to say, it was not even clear at the hearing what the facts and reasons were for revising the appraisal at issue. The administrative judge finds that due process requires the assessor to at least articulate the basis for issuing a correction of error.

Notwithstanding the foregoing, the administrative judge finds that the correction for 2004 must be set aside on other grounds. As previously noted, subject building was appraised at \$109,000 for tax year 2003. Yet, the assessor’s correction resulted in an

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<sup>1</sup> It appears that *all* Shelby County assessment change notices involving corrections of error utilize the same language with the exception of the tax year.



improvement value of \$174,800 for tax year 2004. Given the fact 2004 was not a reappraisal year, one would normally expect the 2003 improvement value of \$109,000 to simply be reinstated since the assessor claimed the building had been deleted from the tax roll due to a clerical error.

The administrative judge finds that a new improvement value for 2004 would only be appropriate in this case if the assessor had made a back assessment or reassessment pursuant to Tenn. Code Ann. § 67-5-1001(a). The administrative judge finds that September 1, 2005 constituted the deadline for a back assessment. The administrative judge finds nothing in the record begins to suggest that the assessor had grounds for a reassessment.

Based upon the foregoing, the administrative judge finds that the corrections of error made by the assessor for both tax years 2004 and 2005 are defective and must be voided. Thus, the administrative judge finds the assessor's original values of \$45,000 and \$92,700 for tax years 2004 and 2005 respectively must be reinstated.

#### ORDER

It is therefore ORDERED that the assessor's corrections of error are hereby set aside and the following values and assessments be reinstated for tax years 2004 and 2005:

<u>Tax Year 2004</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$45,000	\$ -0-	\$45,000	\$18,000
<u>Tax Year 2005</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$92,700	\$ -0-	\$92,700	\$37,080

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

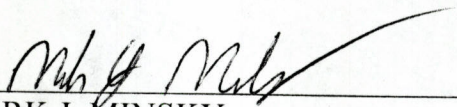
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or



2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of July, 2007.

  
\_\_\_\_\_  
MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Gerald Waggoner  
Tameaka Stanton-Riley, Appeals Manager



EV-1  
mym

# Shelby County Tennessee

Rita Caldwell Clark  
Assessor

February 20, 2006

11097

Keenan Clyde W And Gerald Waggoner  
1433 Poplar Ave  
Memphis, TN 38104-2934

## NOTICE OF ASSESSMENT CHANGE

Parcel Identification Number: 017019 00004  
Location of Property: 1433 Poplar Ave  
Memphis, Tenn.

Dear Property Owner:

In reviewing our records on the above described property, we found an error which existed for the assessment year 2004. Per TCA 67-5-509(c) (1), The Assessor is required to correct the assessed value and report this change to the County Trustee and any municipal collector.

Your original and current appraisal, assessment and property classification for the assessment year 2004 is:

	Market Original	Market Current
Appraisal:	45,000	219,800
Assessment:	18,000	87,920
Classification:	Commercial	Commercial

This appraisal/assessment information is being provided to the City Of Memphis Treasurer & County Trustee.

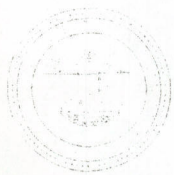
If you disagree with this change in assessed valuation, TCA 67-5-509(e) allows you to appeal directly to the state Board of Equalization within forty five (45) days after notice is sent. The State Board charges a filing fee for each petition submitted. For a petition and the amount of the filing fee contact the

Tennessee State Board of Equalization  
James K. Polk Building, Suite 1600  
505 Deaderick Street  
Nashville, TN 37243-0280 Telephone: (615) 401-7883

If you have any questions or concerns regarding this information, please contact the Assessor's Answer Center at (901) 379-7333 or visit our web site at [www.assessor.shelby.tn.us](http://www.assessor.shelby.tn.us) and a service representative will be happy to assist you.

Sincerely,  
Rita Clark  
Shelby County Assessor of Property





# Shelby County Tennessee

February 20, 2006

Rita Caldwell Clark  
18569 Assessor

Keenan Clyde W And Gerald Waggoner  
1433 Poplar Ave  
Memphis, TN 38104-2934

## NOTICE OF ASSESSMENT CHANGE

Parcel Identification Number: 017019 00004  
Location of Property: 1433 Poplar Ave  
Memphis, Tenn.

Dear Property Owner:

In reviewing our records on the above described property, we found an error which existed for the assessment year 2005. Per TCA 67-5-509(c) (1), The Assessor is required to correct the assessed value and report this change to the County Trustee and any municipal collector.

Your original and current appraisal, assessment and property classification for the assessment year 2005 is:

	Market Original	Market Current
Appraisal:	92,700	219,800
Assessment:	37,080	87,920
Classification:	Commercial	Commercial

This appraisal/assessment information is being provided to the City Of Memphis Treasurer & County Trustee.

If you disagree with this change in assessed valuation, TCA 67-5-509(e) allows you to appeal directly to the state Board of Equalization within forty five (45) days after notice is sent. The State Board charges a filing fee for each petition submitted. For a petition and the amount of the filing fee contact the

Tennessee State Board of Equalization  
James K. Polk Building, Suite 1700  
505 Deaderick Street  
Nashville, TN 37243-0280 Telephone: (615) 401-7883

If you have any questions or concerns regarding this information, please contact the Assessor's Answer Center at (901) 379-7333 or visit our web site at [www.assessor.shelby.tn.us](http://www.assessor.shelby.tn.us) and a service representative will be happy to assist you.

Sincerely,  
Rita Clark  
Shelby County Assessor of Property



**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE: Dudley W. & Louise S Lee )  
Ward 057, Block 001, Parcel 00021 ) Shelby County  
Residential Property )  
Tax Years 2005 & 2006 )

### INITIAL DECISION AND ORDER

### Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$269,300	\$1,029,800	\$1,299,100	\$324,775

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 20, 2007 in Memphis, Tennessee. The taxpayer was represented by Hunter Humphreys, Esq. The assessor of property was represented by John Zelinka, Esq.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 36 Wychewood Drive in Memphis, Tennessee.

The assessor of property originally appraised subject property for tax years 2005 and 2006 as follows:

Land Value	\$269,300
Improvement Value	\$508,400
Total Value	\$777,700
Assessment	\$194,425

On February 1, 2007 the assessor of property issued assessment change notices which indicated an “error” had been discovered and the 2005 and 2006 appraisals had been changed as follows:

Land Value	\$ 269,300
Improvement Value	\$1,029,800
Total Value	\$1,299,100
Assessment	\$ 324,775

The taxpayer filed an appeal with the State Board of Equalization which was received on March 8, 2007. The taxpayer does not contest the assessor's actions for 2006 and the parties have stipulated to a value of \$1,225,000 for that tax year. With respect to tax year



2005, however, the taxpayer maintains that the assessor improperly revised the appraised value.

For ease of understanding, the administrative judge will briefly summarize the pertinent statutes. Tennessee Code Ann. § 67-5-509(d) allows the assessor until March 1 of the second year following the tax year to issue a correction of error. Tennessee Code Ann. § 67-5-509(f) defines a correctable error as follows:

Errors or omissions correctable under this section include only obvious clerical mistakes, involving no judgment of or discretion by the assessor, apparent from the face of the official tax and assessment records, such as the name or address of an owner, the location or physical description of property, misplacement of a decimal point or mathematical miscalculation, errors of classification, and duplicate assessment. . . .

Tennessee law also provides for back assessments and reassessments in appropriate circumstances. Tennessee Code Ann. § 67-1-1001(a) defines those terms as follows:

- (1) 'Back assessment' means the assessment of property, including land or improvements not identified or included in the valuation of the property, that has been omitted from or totally escaped taxation; and
- (2) 'Reassessment' means the assessment of property that has been assessed at less than its actual cash value by reason of connivance, fraud, deception, misrepresentation, misstatement, or omission of the property owner or the owner's agent.

The time period for making a back assessment or reassessment is governed by Tenn. Code Ann. § 67-1-1005(a) which provides in relevant part as follows:

A back assessment or reassessment must be initiated prior to September 1 of the year following the tax year for which the original assessment was made, unless the omission or underassessment resulted from failure of the taxpayer to file the reporting schedule required by law, from actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent, or from collusion between the property owner or the property owner's agent and the assessor. In the latter cases, a back assessment or reassessment must be initiated prior to three (3) years from September 1 of the tax year for which the original assessment was made.

The taxpayer essentially contended that the assessor's revised appraisal for tax year 2005 cannot be upheld as a correction of error or back assessment/reassessment. The taxpayer argued that the revised appraisal did not involve an "obvious clerical mistake" and cannot be considered a correctable error. The taxpayer asserted that if the assessor believed subject residence had escaped taxation, the deadline for initiating a back assessment was September 1, 2006.



Not surprisingly, the assessor of property maintained that she properly made a correction of error. As will be discussed immediately below, however, it is unclear exactly what error the assessor sought to correct.

Unfortunately, the assessment change notice does not identify the error purportedly being corrected. The notice simply states that “[i]n reviewing our records . . . we found an error which existed for tax year 2005. . .”

At the hearing, it initially appeared from counsel’s opening statement that subject residence had not been assessed in 2004 and was being added to the tax rolls effective January 1, 2005. The assessor effectively abandoned this position when staff appraiser Nathan Chamness testified.

The administrative judge finds Mr. Chamness initially testified that the residence had been prorated for tax year 2004 pursuant to Tennessee Code Ann. § 67-5-603(b)(1). According to Mr. Chamness, the prorated value was erroneously carried forward for 2005 due to a clerical error.

The administrative judge finds Mr. Chamness subsequently testified that the assessor had appraised subject property as having 5,185 square feet of living area. Upon discovering that a fee appraiser had appraised subject residence assuming it contained 5,834 square feet of living area, the assessor recalculated the square footage utilizing both a sketch of the property and aerial imaging.

The administrative judge finds that the assessor’s revised appraisal for tax year 2005 must be set aside regardless of whether it is characterized as a correction of error or back assessment/reassessment. The administrative judge finds that the revised appraisal could not have been a back assessment because subject residence was initially appraised at \$508,400 as of January 1, 2005. The administrative judge finds the assessor did not contend that any basis existed for a reassessment under Tenn. Code Ann. § 67-1-1001(a)(2).

The administrative judge finds that the assessor’s actions cannot be sustained under the correction of error statute. The administrative judge finds that the procedure for making a correction of error is set forth in Tenn. Code Ann. § 67-5-509(c) which provides in relevant part as follows:

- (1) Whenever the assessor shall discover, or it has been called to such assessor's attention, that there has been an error or omission in the listing, description, classification or assessed value of property or any other error or omission in the tax rolls held by the trustee or municipal collector, *the assessor shall certify in writing the facts to the trustee or municipal collector*, who shall receive the tax on the corrected assessment and report the difference in the trustee's or municipal collector's errors and releasement list, and shall make such other corrections as such certificate may show right and proper.



(2) *The assessor shall certify to the trustee or municipal collector the facts and the reasons for such a change in such assessment, and the tax shall be collected upon the revised assessment.*

[Emphasis supplied]

\* \* \*

The administrative judge finds that the Notice of Assessment Change issued on February 1, 2007 provides in pertinent part as follows:<sup>1</sup>

\* \* \*

In reviewing our records on the above described property, we found an error which existed for the assessment year 2005. Per TCA 67-5-509(c) (1), the assessor is required to correct the assessed value and report this change to the County Trustee and any municipal collector.

\* \* \*

This appraisal/assessment information is being provided to the City of Memphis Treasurer & County Trustee.

\* \* \*

The administrative judge finds that there is nothing in the record to indicate that the trustee or municipal collector were provided with a separate document specifying the facts and reasons for the assessment change. Accordingly, the administrative judge must presume that the trustee and municipal collector received the same notice as the taxpayer.

The administrative judge finds that the above-quoted notice does not comply with Tenn. Code Ann. § 67-5-509(c) because the facts and reasons for the changes are not stated. The administrative judge finds that in *Lemm Services, Inc.* (Shelby Co., Tax Year 1996) the Assessment Appeals Commission ruled that “the complaint procedure must be strictly followed to assure the validity of the back assessment.” Final Decision and Order at 2. The Commission concluded that because the citation was not sworn and did not state a basis for the back assessment or reassessment, the document was defective and the back assessment or reassessment was therefore void. The administrative judge finds the Commission’s ruling in that case equally applicable to a correction of error proceeding.

Notwithstanding the foregoing, the administrative judge finds that the correction for 2005 must be set aside regardless of which portion of Mr. Chamness’ testimony accurately summarizes the reason for the correction. The administrative judge finds that the 2004 prorated value was not simply carried forward to 2005 due to a clerical error. The

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<sup>1</sup> It appears that all Shelby County assessment change notices involving corrections of error utilize the same language with the exception of the tax year. Thus, it also appears that the notices all utilize generic “boilerplate.”



administrative judge finds exhibit #3 established that subject property was appraised as follows for tax year 2004:

Land Value	\$269,300
Improvement Value	\$379,500
Total Value	\$648,800
Assessment	\$162,200

As noted above, the administrative judge finds that the assessor originally appraised subject residence at \$508,400 for tax year 2005.

The administrative judge recognizes that the State Board of Equalization has historically ruled square footage errors are correctable under Tenn. Code Ann. § 67-5-509. Those cases, however, typically involved situations wherein the parties agreed on the proper square footage and the reason for the error. The administrative judge finds that analyzing an appraisal report, sketch and aerial imagery involves significant judgment and discretion. The administrative judge finds that such an analysis fundamentally differs from situations involving mathematical miscalculations or erroneous physical descriptions.

Based upon the foregoing, the administrative judge finds that the assessor's revised appraisal of \$1,299,100 should be set aside and the original appraised value of \$777,700 reinstated for tax year 2005.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2001:

##### Tax Year 2005

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$269,300	\$508,400	\$777,700	\$194,425

##### Tax Year 2006

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$269,300	\$955,700	\$1,225,000	\$306,250

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within**




**thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of July, 2007.

  
\_\_\_\_\_  
MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Hunter Humphreys, Jr., Esq.  
Tameaka Stanton-Riley, Appeals Manager